

Application Number 10/582,693
Amendment dated August 21, 2008
Response to Office Action dated May 1, 2008

REMARKS/ARGUMENT

Claims 1-13 and 15-17 are pending in the application with claims 1, 9, 12, 13, and 17 having been amended. Authorization for a one month extension is attached.

Claims 1-13 and 15-17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al. (U.S. 2006/0246102) in view of Cooke et al. (U.S. Patent No. 6,821,992).

The Examiner has helpfully pointed out that Mansfield et al. has a common inventor with the instant application and that, based on the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). The Examiner has also pointed out that this rejection might be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a).

The present application has been published as U.S. 2007/0099965.

Mansfield et al. lists six persons as inventors. All six of these inventors are also listed as inventors of the present case. Additionally, the present case lists Alain Villier as an inventor. M. Villier is not listed as an inventor in Mansfield et al.

On July 25, 2008, a search was conducted, via PAIR, of the assignment records of the USPTO. The search revealed:

Publication No. 2006/0246102 has been assigned to Bayer Cropscience S.A. of 15 Rue Jean-Marie Leclair, F-69009 Lyon, France. The assignment was recorded April 18, 2006 and may be found at Reel 017817, Frame 0093.

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Publication No. 2007/0099965 has also been assigned to Bayer Cropscience S.A. of 15 Rue Jean-Marie Leclair, F-69009 Lyon, France. This assignment was recorded October 6, 2006 and may be found at Reel 018423, Frame 0057.

Accordingly, it is submitted that the Mansfield et al. reference has been disqualified under 35 U.S.C. 103(c) as prior art in the current rejection under 35 U.S.C. 103(a).

It is further submitted that Cooke et al., alone, fails to disclose or suggest the currently claimed invention.

Thus, it is requested that the rejection of claims 1-13 and 15-17 under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al. in view of Cooke et al. be withdrawn.

Claim 1 has been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement because, according to the Examiner, "The expressions 'metallic complexes' and 'metalloidic complexes' are employed with considerable abandon in claim 1 with no indication given as to what complexes really are."

Claim 1 has now been amended so that the expressions "metallic complexes" and "metalloidic complexes" no longer appear therein.

Accordingly, it is requested that the rejection of claim 1 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement, be withdrawn.

Claims 1 and 17 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention.

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Specifically, according to the Examiner, the expressions "metallic complexes" and "metalloidic complexes" in claim 1 are indefinite; and the term "general" in claims 1 and 16 [*sic*] is indefinite because it suggests that the compounds have other structures not contemplated by Applicants. The term "general" does not appear in claim 16.

Claims 1 and 17 have been amended to delete all occurrences of "metallic complexes", "metalloidic complexes", and "general".

Claim 1 has also been amended to change "as well as its salts, N-oxides, metallic complexes, metalloidic complexes and optically active isomers" to "as well as a salt, N-oxide, or optically active isomer thereof".

Accordingly, it is requested that the rejection of claims 1 and 17 under 35 U.S.C. 112, second paragraph, be withdrawn.

Claims 1-13 and 15-17 have been provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over the claims of co-pending Application No. 10/566,051 in view of Cooke et al.

As pointed out in the Office Action, a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application.

The present application and U.S. Patent Application No. 10/545,364 are commonly owned by Bayer Cropscience S.A.

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A Terminal Disclaimer Under 37 CFR 1.321(b) and (c) disclaiming, with the customary exceptions, the terminal part of the statutory term of any patent granted on the instant application that would extend beyond the expiration date(s) of the full statutory term(s) of any patent(s) issued on U.S. Patent Application No. 10/566,051 is filed herewith.

Accordingly, it is requested that the provisional rejection of claims 1-13 and 15-17 on the ground of non-statutory obviousness-type double patenting as being unpatentable over the claims of co-pending Application No. 10/566,051 in view of Cooke et al. be withdrawn.

Claim 1 has been objected to because " [t]he term pentafluoro-sulfanyl group for Y appears to recite a square between the two terms."

The terminology has been corrected to read "pentafluoro- λ^6 -sulfanyl group".
Accordingly, it is requested that the objection be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration is requested.

Respectfully submitted,



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EXTENSION REQUEST

This communication is filed after the shortened statutory time period had elapsed and no separate petition is enclosed. The Director of Patents and Trademarks is petitioned, under 37 C.F.R. § 1.136(a), to extend the time for filing a response to the outstanding office action by **ONE** month which will avoid abandonment under 37 C.F.R. § 1.135. The fee under 37 C.F.R. § 1.17 should be charged to Deposit Account No. 15-0700. A duplicate copy of this page is attached.

Amendments to the Claims are reflected in the listing of claims which begins on page 3 of this paper.

Remarks/Arguments begin on page 12 of this paper.